

**Statement of Joseph F. Picciano
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**Federal Emergency Management Agency
Department of Homeland Security**

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**House Homeland Security Committee
Subcommittee on Management, Integration, and Oversight**

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**“9/11 Federal Assistance to New York:
Lessons Learned in Fraud Detection, Prevention, and Control”**

Good Morning Chairman Rogers, Ranking Member Meek and members of the Committee. My name is Joseph Picciano. I am the Deputy Director for Region II of the Department of Homeland Security's (DHS's) Federal Emergency Management Agency (FEMA) based in New York City and covering New York, New Jersey, Puerto Rico and the Virgin Islands. On behalf of FEMA and the Department of Homeland Security, I appear before you today to discuss FEMA's disaster assistance for response and recovery to the New York City area following the September 11, 2001 terrorist attacks.

FEMA and its staff are proud of the work accomplished following the attack. The tragic event posed unique challenges. It tested our ability to deliver help in a timely and effective manner while maintaining accountability.

FEMA Responds

Immediately following the attack, FEMA activated the Federal Response Plan, which brings together 28 federal agencies and the American Red Cross to assist local and state governments in responding to national emergencies and disasters. FEMA Headquarters also activated the Washington-based Emergency Support Team (EST) on a 24-hour basis, and Region II deployed its Emergency Response Team-Advance Element (ERT-A). In addition, FEMA activated the following federal assets to support response operations:

- Twenty Urban Search & Rescue Teams (FEMA)
- U.S. Army Corps of Engineers (Power and Debris Teams)
- Four Disaster Mortuary Teams (DMORT)
- Four Disaster Medical Assistance Teams (DMAT)
- One Management Support Team (MST)
- One Deployable Portable Morgue Unit (DPMU)
- One Veterinary Medical Team

President Bush appointed the Federal Coordinating Officer (FCO), responsible for coordinating the timely delivery of Federal disaster assistance to New York State, local governments, and disaster victims. On September 15, 2001, FEMA established the Disaster Field Office (DFO) at Pier 90 on the West Side of Manhattan. It initially operated 24 hours per day and served as a base for all FEMA operations. On December 3, 2001, the DFO relocated to 80 Centre Street in Lower Manhattan.

President Bush pledged at least twenty billion dollars to the City and State of New York. In the following 11 months, Congress passed several bills to provide approximately \$20 billion in direct funding and tax benefits. This was the first time that the amount of federal assistance for a disaster was determined early in the response and recovery process. Congress allocated \$8.8 billion of this twenty billion to FEMA to reimburse individuals, governments, and not-for-profit organizations for response and recovery work related to the World Trade Center (WTC) disaster. As of May 30, 2006, FEMA has obligated approximately \$8.77billion, leaving approximately \$30.3 million remaining for distribution. These remaining funds will be used to bring several ongoing programs to their completion, particularly Human Services programs such as Mortgage Rental

Assistance, Individual and Family Grants, and Crisis Counseling assistance for the State of New York, and funding to reimburse applicants for currently non-funded projects authorized by the Consolidated Appropriations Resolution, enacted February 20, 2003, P.L. 108-7 (CAR).

Public Assistance (PA)

Although there were a total of 191 applicants with Project Worksheets (PWs), three applicants received approximately 95 percent of all the Stafford Act funding:

- New York City (50 agencies received assistance);
- The Port Authority of New York and New Jersey; and,
- The State of New York (50+ agencies, including the MTA).

Recognizing that the response to this tragedy was widespread, and that the New York State Emergency Management Office (SEMO) could not conduct a thorough and complete applicant briefing with such an extensive and unknown population, FEMA and SEMO established a Private-Non-Profit (PNP) Hotline on October 17, 2001 to identify potential PNP applicants. FEMA staffed the call center with local hires who worked Monday through Friday, 8 a.m. to 6 p.m., from October 17 to November 17, 2001; however, the call center was discontinued due to extremely low call volume (less than 150 inquiries total).

Based on the magnitude of the disaster and the duration of past recovery efforts (such as the Northridge Earthquake and Hurricane Andrew), the FCO appointed the Deputy FCO for Long-Term Recovery, responsible for identifying the needs of the community, coordinating with other federal, state, and local agencies to address those needs, and developing FEMA's long-term recovery plans.

Since the disaster recovery needs could not be solved within one program or agency, the Deputy FCO relied heavily on the creation of local and federal task forces to better coordinate the recovery effort. The various task forces focused on activities designed to immediately stimulate the development and infrastructure needs of the community. By bringing together all of these resources, the local agencies could immediately gain access to the resources of numerous federal agencies, and the local agency could promptly respond to time-sensitive problems in an effective manner.

The primary task force was the Federal Task Force (FTF) to Support NYC. The FEMA Deputy FCO for Long-Term Recovery chaired this task force. It was comprised of representatives from 11 federal agencies focused on developing a complete understanding of the reconstruction needs of the local and state government, and devising a recovery solution comprehensive enough to address these needs.

Equally important for its immediate impact on local projects was the Infrastructure Recovery Workgroup (IRWG), originally chaired jointly by SEMO and FEMA, and then later chaired by the Commissioner of NYC Department of Transportation. This task

force was assembled to ensure an efficient and integrated restoration of public and private infrastructure destroyed or damaged by the disaster. The IRWG consisted of numerous federal, state, local, and private sector participants.

The Public Assistance Team

Immediately following the disaster, Region II assigned a Public Assistance Officer (PAO) and deployed over 30 Disaster Assistance Employees (DAEs) to serve as Public Assistance Coordinators (PACs) and Project Officers (POs). Within two weeks of the disaster, Headquarters, the FCO, and the Regional Director decided to replace the PAO and outsource the remainder of the PA operation (with the exception of National Emergency Management Information System (NEMIS) positions), substituting the DAEs with its Technical Assistance Contractors (TACs). The decision to outsource the PA operation, the first ever for FEMA, was made for several reasons:

- The catastrophic nature of the disaster called for deep technical expertise and professional management;
- The long-term nature of the project required a high-level of consistency among the staff; and,
- A fear that another terrorist attack might occur and require immediate FEMA resources.

To ensure that FEMA had access the broadest available range of technical specialists, the contracting officer asked all three TAC to supply personnel.

Ensuring Quality

It was recognized by FEMA and the applicants that well-written PWs, supported by accurate and well-documented cost analyses, and prepared in accordance with the Stafford Act and FEMA regulations, would reduce appeals and Office of Inspector General (OIG) audits. For that reason, quality was emphasized at the outset and considered extensively when disaster-specific processes were established.

To ensure quality, and validate that agencies were requesting reimbursement for all they were entitled to under the law, New York City, the disaster's largest applicant, required that all PWs, once prepared by the PAC and PO, be reviewed and signed-off by the agency representative, a NYC Office of Emergency Management representative, and an OMB representative, before being entered into NEMIS. Although FEMA was initially concerned the obligation process would be slowed, in the end it assured both the City and FEMA of a higher quality PW.

On the FEMA side, three initiatives were undertaken to ensure quality:

1. A Policy and Program Advisor position was created to provide verbal and written guidance to PACs and POs on eligibility questions. This advisor served as a critical link between PA management (the program decision makers) and field staff (the program implementers). Besides dealing with complex and sensitive issues, this advisor also prepared the PA Program Guidance memos for the PAO's signature.
2. FEMA developed a Quality Assurance Guide in October 2001, and disseminated it to all PACs and POs. This guide provided a series of detailed steps to be completed by FEMA POs during the preparation of PWs.
3. A quality control queue was created within NEMIS. An experienced technical specialist, with extensive program knowledge, a background in accounting, and access to management, worked off-site to review every PW and confirm eligibility decisions against all applicable regulations and disaster-specific guidance; verify cost estimates; correct any errors or omissions; and provide feedback to PACs and POs, when necessary.

In addition, FEMA's Office of General Counsel (OGC) and the OIG were physically present at the DFO, and subsequently the Federal Recovery Office, and provided day-to-day advice to the applicants and PA management. The OGC attorney(s) drafted mission assignments and interagency agreements, addressed eligibility-of-applicant issues and a myriad of other issues surrounding access rights, property ownership, liability, procurement, and insurance.

The OIG staff worked proactively with PA staff and applicants to ensure a consistent level of understanding regarding the documentation and audit requirements. Besides attending the applicant briefings and kickoff meetings, the OIG held a three hour audit briefing for all NYC agencies, and frequently provided feedback to PA managers regarding program, policy, or process issues. The OIG also reviewed all 9/11 Associated Cost PWs.

Consolidated Appropriation Resolution (P.L. 108-7)

In the aftermath of the disaster, it soon became apparent that while the Stafford Act was generally well-suited to most response and recovery needs, there were a number of significant costs which were clearly ineligible.

To address these types of projects, Congress enacted the Consolidated Appropriation Resolution of 2003 (CAR) signed into law by the President as Public Law 108-7 on February 20, 2003, to fund:

- (1) 9/11-associated costs not reimbursable under the Stafford Act;
- (2) \$90 million for long-term health monitoring of emergency services, rescue, and recovery personnel; and,

- (3) Up to \$1 billion to establish insurance coverage for the City of New York and its contractors for claims arising from debris removal at the World Trade Center site.

This authorization was granted contingent on funds made available under P.L. 107-38, 107-117, and 107-206. In other words, any reimbursement for non-Stafford Act associated costs would come from the existing appropriations of \$8.8 billion, after all Stafford Act-related costs had been reimbursed. By the time that the CAR was enacted, more than 17 months after the disaster, New York City and New York State had already paid many of these costs; therefore, reimbursement from FEMA effectively resulted in much needed budget relief for these agencies.

In March 2003, FEMA, the City, and the State verbally agreed to the following:

- The PA program would stop accepting costs for Stafford-eligible projects as of April 30, 2003;
- The applicants would submit all Project Completion and Certification Reports (P.4s) no later than June 16, 2003;
- FEMA would programmatically close all Stafford-eligible projects by June 30, 2003;
- FEMA would use the Project Worksheet to fund all 9/11 Associated Costs; rather than complete a P.4 certifying completion of the project and expenditure of the funds, the City and State would each separately sign a grant management letter certifying to abide by the Federal grant management requirements;
- FEMA would establish a Dedicated Fund (also referred to as a Set-Aside Fund) for both the City and State that would include:
 - (1) the estimated cost of all incomplete Stafford-eligible projects deobligated due to the April 30, 2003 deadline, and
 - (2) an estimate for all Stafford-eligible projects not funded on a PW as of April 30, 2003;
- The City and State could draw against the 9/11 Associated Costs PWs on a dollar by dollar basis up to the amount set-aside in their Dedicated Fund;
- Once the City and State exhausted their respective Dedicated Funds, all remaining dollars available for 9/11 Associated Costs would be divided on a two-thirds for the City, one-third for the State basis (as mutually agreed to by NYC and NYS); and,
- The applicant and grantee would submit no further appeals or time extension requests.

This was documented in a Joint Letter of Agreement dated June 2003. The letter also specified that the Port Authority would receive \$448.75 million in federal funding, and that the date for the Port Authority to submit Stafford-eligible costs would extend beyond April 30, 2003. Since all County and PNP projects were completed and funded by April 30, 2003, the agreement did not affect these applicants.

Expedited Closeout

To close out the PA Program and accelerate funding of the 9/11 Associated Costs, FEMA established an expedited closeout process. Unlike the traditional closeout process where the applicants initiate it and the grantee coordinates it, this expedited process established firm deadlines and was led by FEMA. By closely managing the development of P.4s, streamlining the financial reconciliation of projects, and refining the closeout database initially developed by the Region to closeout DR-1391, by July 2003 FEMA was able to receive and forward to the grantee signed P.4s for all Stafford-eligible projects. The City and State were active participants in this process because it quickly brought to a close the Stafford Act-eligible program, thereby saving the City and State considerable time and money to manage a long-term, traditional closeout, and it allowed them to promptly draw down on any remaining funds using 9/11 Associated Cost projects.

9/11 Associated Costs

Once the closeout was complete, FEMA then worked with NYC and NYS to prepare PWs for 9/11 Associated Cost projects. 9/11 Associated Cost projects were defined as those related to 9/11 that were not reimbursable under the Stafford Act. Projects such as CUNY's Fiterman Hall and the Battery Park City sidewalk and road repair identified in the City and State's dedicated fund, respectively, were not prepared as 9/11 Associated Cost projects because these were eligible under the Stafford Act.

To determine the allocation of the CAR funding, FEMA subtracted from the \$8.8 billion all Stafford Act program expenditures to arrive at the available funding, and immediately deducted from that figure all the projects authorized by the CAR.

Calculating the funds available for projects authorized by the CAR 2003 was complicated, as FEMA wanted to ensure that funds remained to meet its projected Stafford Act obligations, and still be able to expedite funding to the City and State for the Debris Removal Insurance Program (DRIP), expanded health care monitoring, and 9/11 Associated Projects—all large and costly projects. To do so, FEMA's Stafford Act projection of \$6.44 billion reflected an amount slightly higher than anticipated in certain areas—primarily for Human Services and other Administrative Costs—to mitigate the risk of FEMA not having enough funds to meet its Stafford Act obligations. This projection was refined in January 2004 when it became clear that additional funds could be made available to the City and State to fund 9/11 Associated Cost PWs, and these PWs were obligated. All or a portion of these available funds may be provided in the future to NYC, NYS, and the Port Authority to cover additional 9/11 Associated Costs.

Port Authority

As a result of the WTC attacks, the Port Authority suffered an estimated loss of \$4.6 billion generated primarily by:

- The collapse of seven major office buildings (including the Twin Towers) owned by the Port Authority;
- The deaths of 84 Port Authority employees, including 37 PAPD police officers;
- Damage to its PATH system; and,
- Lost revenue.

Since the estimated \$4.6 billion loss far exceeded its insurance coverage of \$1.5 billion, FEMA, the Port Authority, and SEMO developed and implemented an Insurance Apportionment Strategy. This strategy provided immediate cash flow to the Port Authority for Stafford-eligible costs, while ensuring that the overall obligation was not duplicated by insurance benefits.

Under the terms of the ECP, and pursuant to the June 2003 Letter of Agreement (LOA) reached between FEMA, NYS, and NYC:

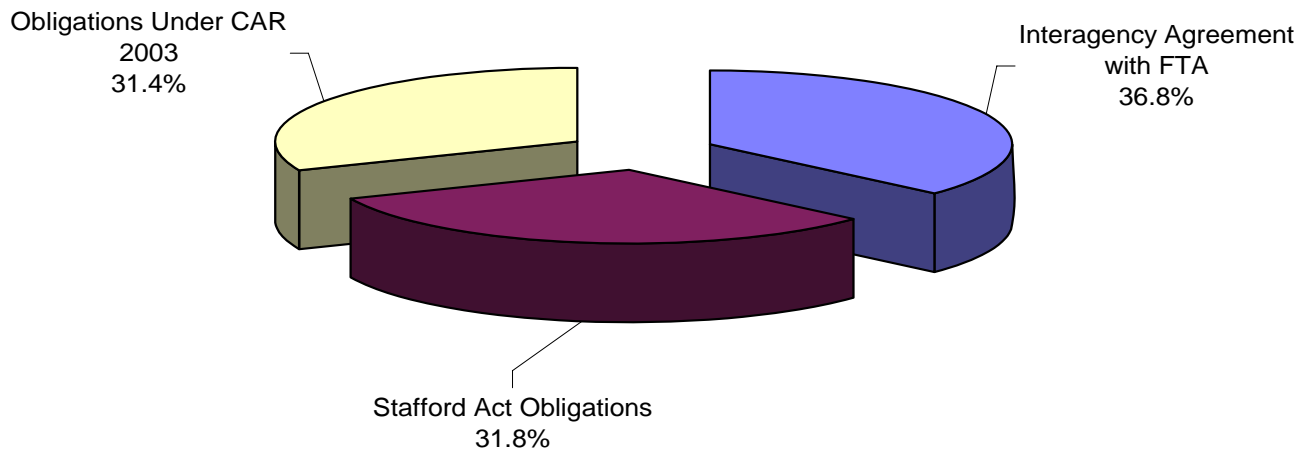
1. FEMA would reimburse the Port Authority for all Stafford-eligible work completed and paid for by May 31, 2003, regardless of whether the entire scope of eligible work had been completed; and,
2. The Port Authority's allocated disaster funding—whether Stafford eligible, Associated Costs, or Subgrantee Allowance—was capped at \$448.75 million.

Using the Insurance Apportionment Strategy, FEMA reimbursed the Port Authority for Stafford-eligible costs obligated via project worksheets, and an administrative allowance. These payments accounted for \$400 million toward the Port Authority's funding limit capped at \$448.750 million. The left \$48.750 million available to the Port Authority as reimbursement for 9/11 Associated Costs.

Facts

In two years FEMA obligated \$7.48 billion in Public Assistance and infrastructure-related costs, in three categories as shown below in Figure VI-1. (An additional \$21 million was obligated in January and February 2004—two years and four months after the attacks—to fund NYC and NYS 9/11 Associated Cost PWs.)

\$7.48B Obligated for Public Assistance Related Costs



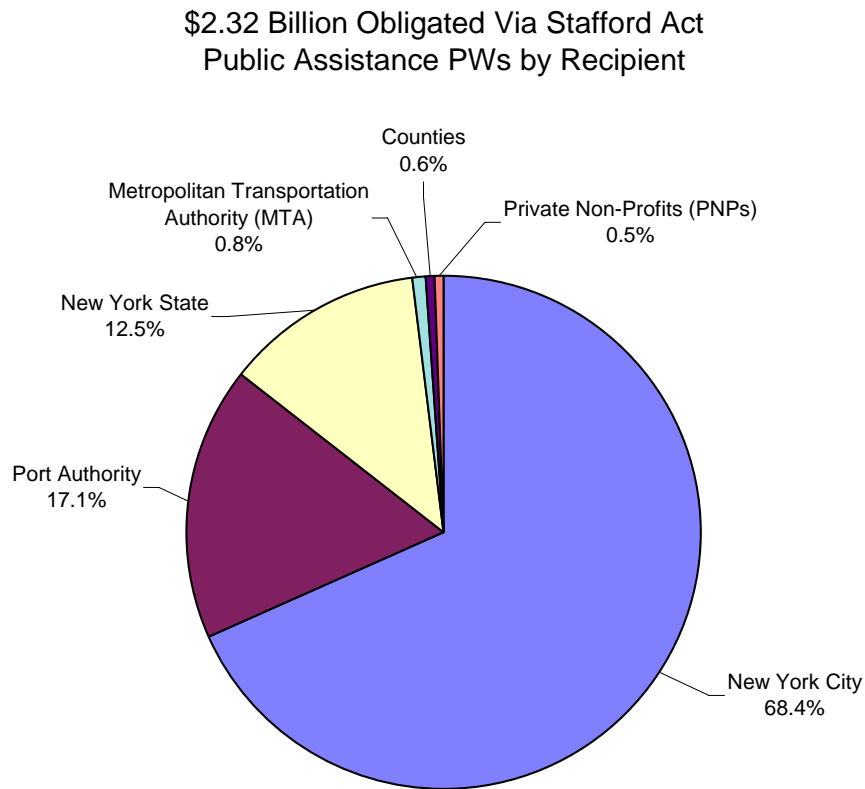
FEMA Transfers \$2.75 Billion to FTA

The \$2.75 billion transferred to FTA was combined with the US DOT's \$1.8 billion allocation, to create a \$4.55 billion transportation fund to be administered by FTA and used to reconstruct and enhance Lower Manhattan's transportation infrastructure, including roadways, subway systems, and commuter rails. The process and conditions of this transfer of funds is treated in greater detail later in the "Emergency Transportation—Restoration of the Lower Manhattan Intermodal System" section of this PA Summary.

FEMA Obligates \$2.38 Billion Under Stafford Act

The Stafford Act obligations totaled \$2.38 billion, including \$.06 billion representing grant management and project administration costs. As Figure VI-2 illustrates, of the \$2.32 billion obligated to traditional PA Program recipients, approximately two-thirds was awarded to NYC, with the Port Authority and New York State claiming the majority of the remaining third.

Figure VI-2 Stafford Act Project Worksheet Obligations by Recipient



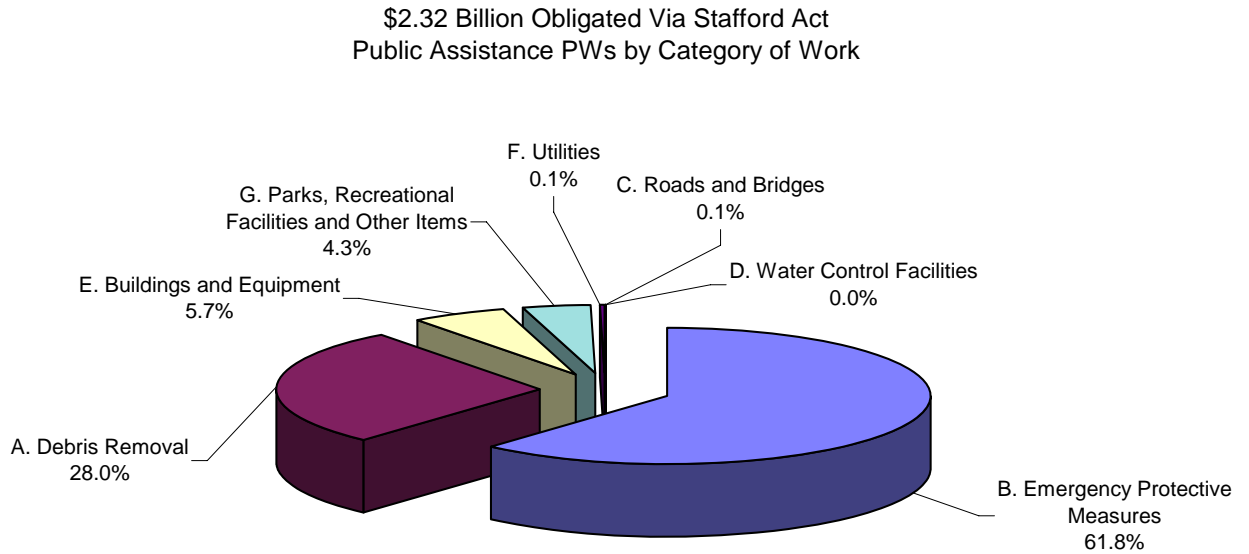
Approximately 90 percent of the reimbursed costs represented Emergency Work, FEMA work categories A and B (refer to Figure VI-3).

Major obligations included:

- Debris Removal to DDC and DSNY
- Incremental Cost Approach (ICA) for OT Labor
- Death and Disability Benefits
- Temporary PATH Station
- Emergency Transportation (excludes Temporary PATH Station)
- OCME for Victim Identification
- Building Cleaning and Air Monitoring

The above statistics comprise roughly 82 percent of all Emergency Work and nearly 75 percent of all funds obligated within FEMA's traditional Stafford Public Assistance Program.

Figure VI-3 below illustrates Stafford Act Project Worksheet Obligations by Category of Work



The 40 largest Stafford Act PWs of the disaster, which represent 75 percent of total PA Stafford-eligible dollars, are shown below in Figure VI-5:

Figure VI-5 Forty Largest Stafford Act Obligated PWs

40 LARGEST (\$) STAFFORD OBLIGATED PROJECTS						
Applicant	Agency	Short Description	Cat	PW #	Dollars	% of Total Stafford Obligated
NYC	NYPD (through NYC)	ICA Overtime (INF Reconciled with PW #161)	B	162	\$ 201,687,108	8.69%
NYS	SEMO	Pension Actuarial Loss - State Share	B	1492	185,800,000	8.00%
PA	Port Authority	Temp Path Station	B	783	140,017,382	6.03%
NYC	DDC	Debris Removal	A	1086	100,805,965	4.34%
NYC	DDC	Debris Removal	A	552	87,077,926	3.75%
NYC	NYPD	ICA Overtime (with PW #162)	B	161	82,267,410	3.54%
NYC	DDC	Debris Removal	A	870	79,771,321	3.44%
NYC	FDNY	ICA Overtime	B	148	75,398,076	3.25%
PA	Port Authority	Tunnels E & F Rehab	G	781	64,826,186	2.79%
NYC	NYC OMB	Pension Actuarial Loss - City Share	B	1491	64,600,000	2.78%
PA	Port Authority	Temp Office Relocation	B	1148	53,122,290	2.29%
NYC	DDC	Debris Removal (INF Reconciled w/PW #92)	A	106	52,000,000	2.24%
NYC	DDC	Debris Removal (INF Reconciled w/PW #97)	A	101	42,000,000	1.81%
NYC	DDC	Debris Removal (INF Reconciled w/PW #95)	A	102	42,000,000	1.81%
NYC	DDC	Debris Removal (INF Reconciled w/PW #89)	A	104	35,000,000	1.51%
NYC	NYPD	ICA Overtime - Nov. 10-25, 2001	B	631	31,438,417	1.35%
NYC	DOS	Debris Disposal	A	996	29,217,774	1.26%
NYC	NYC OMB	Fringe Benefit Adjustment Citywide	B	1517	27,986,289	1.21%
NYC	FDNY	Death Benefits for Deceased Firefighters	B	404	26,531,614	1.14%
NYC	FDNY	Backfill Overtime Labor	B	753	26,470,304	1.14%
PA	Port Authority	ICA Overtime	B	259	26,109,000	1.12%
NYC	BOE	Lost Instructional Time	G	1462	19,312,265	0.83%
PA	Port Authority	ET - Ferry Services	B	765	19,272,305	0.83%
NYC	DOS	ICA Overtime	A	196	18,985,951	0.82%
NYC	DDC	Debris Removal	A	767	18,500,000	0.80%
NYC	FDNY	Fire Response Vehicle Replacement	E	110	18,060,351	0.78%
PA	Port Authority	General Site Work Contract	E	791	17,829,460	0.77%
NYC	DDC	Debris Removal	A	750	17,025,609	0.73%
NYC	NYPD	Vehicle Usage	B	413	16,972,596	0.73%
NYC	NYPD	Post-ICA Overtime	B	1334	16,382,952	0.71%
NYS	MTA	Repair Tunnel 1/9 & Cortlandt St. Station	G	141	13,710,000	0.59%
NYC	DCAS	Emergency Supplies	B	663	12,926,008	0.56%
PA	Port Authority	Temporary Relocation - Increased Rent	B	913	12,370,561	0.53%
NYC	DOC	ICA Overtime	B	149	10,938,256	0.47%
PA	Port Authority	Info Tech: SL100 Telephone Network	E	1457	10,806,970	0.47%
NYC	DDC	Debris Removal	A	1090	10,191,569	0.44%
NYS	State Police	Overtime Labor	B	325	9,688,314	0.42%
PA	Port Authority	Info Tech: Computer Equip & Services	E	802	9,576,139	0.41%
NYS	DMNA	Overtime Labor	B	4	8,926,131	0.38%
PA	Port Authority	Post-ICA Overtime	B	793	8,871,847	0.38%
TOTAL					\$ 1,744,474,346	75.15%

FEMA Obliges \$2.37 Billion under CAR 2003

As previously discussed in Section III, the passing CAR 2003 in February 2003 allowed for greater flexibility in disbursing federal grants to the City and State of New York for costs associated with the events of September 11th. After budgeting the \$1 billion for debris removal insurance and the \$90 million for expanded health care monitoring, FEMA allocated and then obligated funds to NYC and NYS on 9/11 Associated Cost PWs, first disposing of each entity's Dedicated Funds, and then separating the remaining funds two-thirds to the City, and one-third to the State. As of August 3, 2004, the City had received \$913 million in 9/11 Associated Costs and the State has received \$372 million including \$49 million for the Port Authority.

Backfill Labor

Stafford Act-eligible backfill labor costs after the WTC disaster exceeded \$50 million, primarily for the FDNY, NYPD, NYC Department of Sanitation, and NYC Department of Transportation. To evaluate the eligibility of backfill costs—costs incurred by the applicant to backfill for an employee performing eligible emergency work—PA staff followed the November 1993 memo issued by the PA Division Chief regarding force account (in-house) labor. This memo outlined instances where FEMA could reimburse for backfill, and how this reimbursement should occur. The methodology also contained a final step to validate that the eligible disaster-related overtime and backfill overtime did not exceed the total overtime paid by the department. This was a critical step since some FDNY backfill overtime PWs were greater than ten million.

Cleaning

The collapse of the WTC created a widespread plume of dust and debris. From the beginning, residents, community leaders, and City and State officials expressed concern that the dust may pose a threat to health and air quality. Due to these concerns, the EPA recommended to FEMA that the dust and debris be removed from residential units and unclean buildings in order to reduce the long-term risk of exposure to chemicals such as asbestos.

Based on EPA's advisement and requests from the City, FEMA provided funding for the exterior and/or interior cleaning of 244 buildings and 4,500 residential units in Lower Manhattan, and two unoccupied privately owned buildings in close proximity to the WTC site. FEMA classified this work as debris removal and based its eligibility determination on the EPA's and NYC Department of Environmental Protection's concern over the potential health threats posed by the debris, and the threat to the economic recovery this debris posed to lower Manhattan, as outlined in a letter from NYC to FEMA.

To ensure authorized right-of-entry, as required by the Stafford Act and 42 USC § 5173, the City of New York developed a request form that the building owner or resident needed to sign before work could commence. The authorization form included a

stipulation that any insurance proceeds received for activities covered by the EPA/DEP's dust cleaning program would be remitted to the federal government. The State Emergency Management Office maintains responsibility for notifying FEMA of any such remittance.

Death and Disability Benefits

In responding to the WTC disaster, 341 FDNY firefighters, 2 FDNY EMTs, 23 NYPD police officers, 3 State Court Officers, and 37 Port Authority police officers died. Their deaths were the first large-scale casualties resulting from an emergency response effort in FEMA's history. For the first time, FEMA received a request that it reimburse applicants—the City and State of New York—for certain contractually obligated death benefits, increased pension contributions, and other associated costs. Specifically, the City and State requested reimbursement for more than \$750 million in death and disability benefit costs, including:

- Funeral Costs and Memorial Services;
- Lump Sum Line of Duty Benefit Costs;
- Increased Pension Costs Due to Line of Duty Deaths;
- Increased Pension Costs Due to Increased Disability Retirements; and,
- Leave Payout.

Upon review, FEMA concluded that funeral and memorial costs, lump sum death benefits, and increased pension costs due to line of duty deaths, although unusual, were a direct result of the disaster and a cost of performing the emergency work. Specifically, FEMA management found \$291 million to be in accordance with OMB Circular A-87 Attachment B, Item 11, Compensation for Personnel Services, and item 11d(5).

Given the magnitude of the death benefit claims, the FEMA had an actuary review the applicant's actuarial studies to determine the soundness of the applicant's methodology and the reasonableness of the assumptions. Based on the actuary's findings, which supported the applicant's claim, FEMA authorized the reimbursements.

FEMA reimbursed the City and State for additional death and disability benefit costs as 9/11 Associated Costs.

FEMA did not approve death benefit costs for City or State employees killed as a result of the disaster where it could not be reasonably demonstrated that these individuals were performing eligible emergency work. FEMA also did not reimburse for State worker compensation costs as FEMA reimbursed the applicant a fringe rate to perform the emergency work, which included a component for workers compensation.

Debris - Time and Material Contracts

The FEMA PA Debris Management Guide (FEMA 325) states that the Time and Material (T&M) work should be limited to a maximum of 70 hours of actual emergency

debris clearance work, and shall be permitted only for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. After the WTC disaster, the NYC Department of Design and Construction—the overseer of the debris removal effort—entered into time and material contracts with four construction managers (CMs) to accomplish the emergency debris removal, hauling tasks, building demolition, and site stabilization. The CMs operated via a letter of intent, and not a complete written contract. Each of the CMs was capped at \$250 million.

On September 15, 2001, FEMA approved a written waiver of policy, which allowed the extended use of T&M contracts based on continuing unpredictable and complex site conditions at the WTC. In addition, FEMA waived in part the requirement for competitive bidding on the basis of continuing public exigency and emergency. Due to these contracting circumstances, it was prudent that the federal government provide oversight to ensure that the scope of work and costs of the debris operation were properly controlled. In order to accomplish this, the City and FEMA established and implemented monitoring systems using resources from FEMA, Office of the Inspector General, the DDC, the NYC Office of Management and Budget, the NYC Department of Investigation, and several private auditing groups.

In November 2001, FEMA tasked the US Army Corps of Engineers (USACE) to provide an independent evaluation of the contract arrangement and recommend whether a T&M contract was still the most feasible and cost effective contract payment basis, or whether another type of contract, such as a lump sum or unit price, would be more suitable. Based on USACE's assessment and recommendation, FEMA extended its T&M waiver to DDC for the duration of the debris operation.

Debris Removal Insurance Program

Generally contractors, such as the four CMs, provide their own general and professional liability insurance coverage and include the costs of insurance as part of their overhead. As such, these costs are generally eligible for reimbursement by FEMA. Because of the extreme conditions related to debris removal at the WTC, and the unique nature of the hazards associated with the debris removal operation, the CMs required a greater amount and scope of insurance coverage than is typically obtained, including coverage for environmental liability.

The City agreed to provide a master insurance program, called the Coordinated Insurance Program, to cover both the debris removal contractors and employees that had worked at the WTC site. However, due to the impact of the disaster on the insurance market, available insurance was severely limited. The City was reimbursed to obtain general liability coverage and marine insurance coverage. These policies did not provide the City with coverage for environmental risks, such as asbestos, or professional liability. Although the City sought coverage for these risks, no commercial insurance was available due to the unknown environmental and health risks associated with the disaster. Because of the unresolved insurance issue, the CMs completed debris removal at the WTC without a written contract.

The major issue for FEMA was the City's insistence that the liability protection apply not only to the contractors, but also to the City for claims brought by City employees that had worked at the WTC site. FEMA had informally advised the City that the contractor-based insurance was eligible under the PA program, but the City-employee based insurance was not and would have to be separated in order for FEMA to provide funding. In addition, FEMA was concerned about the cost effectiveness of the City's proposal.

The passage of the CAR resulted in the City establishing a captive insurance company to process and payout any claims, and FEMA obligating \$999.9 million on PW 1554 in September 2003. The draw down of funds will not occur until all final terms and conditions, including the scope of coverage, have been agreed upon.

Emergency Transportation

The WTC disaster caused unprecedented damage and disruption to New York's regional transportation system. The region relies on a complex network of rail, subway, bus, bridges, tunnels, roads, and ferry lines that ties together millions of workers and residents throughout New York City and in surrounding counties in New York, New Jersey and Connecticut. The collapse of the WTC towers caused massive damage to sections of this regional transportation system which serves Lower Manhattan. This network of rail, subway, bus, and ferry lines was disrupted as a result of:

1. The destruction of the Port Authority Trans-Hudson (PATH) WTC station, the terminal station for the PATH lines running under the Hudson River and serving Lower Manhattan.
2. The damage to the Metropolitan Transportation Authority's (MTA) Cortlandt Street Station and the N & R and 1 & 2 subway lines, all located below and adjacent to the WTC towers. (The MTA subway lines run underground along the west side of Manhattan. These subway systems were seriously impacted by the disaster, but unlike the PATH system, did not suffer complete destruction of major system components.)
3. Alteration of surface transit routes made necessary by debris removal operations and infrastructure repairs in the vicinity of Ground Zero.

As a direct result of the disaster, 68,000 commuters who used the WTC PATH station each day had to find an alternative route to work. Approximately 76,000 commuters and residents were forced to find alternatives to their pre-9/11 subway routes.

The direct damage caused by the disaster represented only a portion of the disruption to the region's transportation system, however. The damage caused a ripple effect that disrupted the entire system, affecting every mode of transportation that served Lower Manhattan. For example, the tens of thousands of New Jersey residents who commuted to Lower Manhattan on the PATH each day were suddenly forced onto other modes of

transportation. Overnight, the demand for ferry service to Lower Manhattan more than doubled, and Penn Station experienced an influx of new riders as commuters were forced to take New Jersey trains into Penn Station and then take subways downtown. This strained the capacity of existing transportation routes, created dangerous overcrowding, resulted in long waits for service, and caused significant damage to the region's economy.

Restoration of the Lower Manhattan Intermodal System

A traditional interpretation of Section 406 of the Stafford Act would have limited FEMA's funding to the replacement of the WTC PATH station and other physically damaged elements of the system. However, a white paper was developed that provided a broader definition, within the context of the Stafford Act, of what can comprise a "damaged system," which FEMA Headquarters approved. By accepting this definition, FEMA was able to find eligible both directly and indirectly damaged projects that are critical to restoring the functionality of the Lower Manhattan intermodal transportation system. In August 2002, this unique approach resulted in two critical developments:

1. FEMA announced that \$2.75 billion appropriated by Congress to FEMA's disaster fund could be used to help restore the transportation infrastructure system in Lower Manhattan. To this amount, the Federal Transit Administration (FTA) added \$1.8 billion, both of which were made available for transportation projects, for a total of \$4.55 billion.
2. FEMA and the US Department of Transportation (DOT) entered into a Memorandum of Agreement (MOA) in August 2002, which designates the FTA as the responsible agency for administering and monitoring the distribution of the \$4.55 billion. This would enable the Federal government to assess needs and distribute funds in a systematic, comprehensive, and efficient manner.

Although the MOA noted that the FTA needed to disperse the \$2.75 billion in accordance with the Stafford Act, this was waived due to the passage of the Consolidated Appropriation Resolution of 2003 (CAR 2003).

In March 2002, FEMA agreed with New York City that the emergency transportation needs of the region justified the increased costs involved in increasing the frequency of ferry services. FEMA agreed to reimburse New York City and the Port Authority for the operating costs of some new and expanded services initiated post 9/11. This began a series of ferry projects aimed at providing alternatives to commuters seeking ways, other than driving and subways, to reach Lower Manhattan. Eventually, over \$47 million was obligated for ferry service and temporary landing projects that provided ferry service from:

- Hoboken to Lower Manhattan;
- Brooklyn to Lower Manhattan;

- Hunters Point, Queens and East River down to Lower Manhattan; and,
- Lower Manhattan Circulator.

Family Center

As part of its rescue and response effort, the City of New York needed to quickly establish space where families and friends of the victims could gather to provide or could obtain information about those missing or presumed dead, and where families of victims could apply for assistance. To meet this need, NYC established the Family Center at Pier 94 in Manhattan, which provided a safe and convenient location where families to obtain information about the missing as well as various services and programs.

Because the Family Center provided some services similar to those of a Disaster Service Center, which are generally not eligible for PA funding, FEMA had to carefully consider the eligibility of the build-out and operation of the Family Center. Basing its decision on 44 CFR § 206.225, FEMA determined that the costs incurred by the City to establish and operate the Family Center were eligible since services at the Family Center, such as providing a centralized site to fill out missing person reports, submit DNA samples, and begin processing death certificates, was an essential community service in the aftermath of this disaster. The total cost to build-out and manage the Family Center was approximately \$10 million.

Full Replacement Value (Vehicles)

As a result of the collapse of the WTC towers on September 11, over 200 publicly owned vehicles were destroyed beyond repair. Title 44 CFR § 206.226(g) stipulates that eligible equipment damaged beyond repair may be replaced by “comparable items.” In interpreting this federal regulation, FEMA’s Public Assistance Guide states:

When equipment, including vehicles, is not repairable, FEMA will approve the cost of replacement with used items that are approximately the same age, capacity, and condition. Replacement of an item with a new item may be approved only if a used item is not available within a reasonable time and distance.

In recognition that the collapse of the WTC towers destroyed hundreds of emergency response vehicles, which significantly and adversely impacted these agencies’ ongoing ability to expeditiously deliver emergency services, the Federal Coordinating Officer, in a memo dated December 12, 2001, sought Headquarters’ approval for a disaster-specific directive aimed at fully and promptly restoring the services provided by these emergency vehicles, with minimal disruption to the overall recovery process. More specifically, this directive would serve to allow for the reimbursement of new, 2002 model vehicles to replace those lost in the disaster in lieu of analyzing and determining, on a case-by-case basis, whether each destroyed vehicle could be replaced “within a reasonable time and distance.”

The FCO's request was granted and documented in PA Program Guidance #8, dated January 16, 2002. According to this guidance, the reimbursement value of a replacement vehicle would be:

- Based on the estimated cost of its purchase through the applicant's normal procurement process; and,
- Calculated net of deductions for actual or anticipated insurance proceeds.

Lost Instructional Time

On September 11, 2001, the collapse of the WTC forced the NYC Board of Education (BoE) to evacuate schools in Lower Manhattan and cancel classes citywide. Whereas most students were able to return to their respective schools on September 13th, students attending schools within close proximity to the disaster site were displaced and unable to return to either their own school or to provisional school facilities until September 18th. In total, NYC estimated that public school students lost more than 15 million hours of instructional time due to school closures, delayed openings, and school relocations. To replace the lost instructional time, the City proposed implementing an after-school program, contingent on FEMA funding.

While FEMA recognized that school hours were lost as a result of 9/11, a program contingent on FEMA funding would not satisfy the emergency work criteria per FEMA regulations. Ultimately, Congress directed FEMA to pay for this activity in House Report 107-593. FEMA obligated a \$78 million Category G PW to fund an after-school program intended to replace the instructional time lost as a result of the WTC disaster.

Mutual Aid

Not surprisingly, the response from people, non-profits, and other governmental jurisdictions to help NYC respond and recover was enormous. In part due to this response, the President declared every county in New York eligible for Category B emergency work. In light of every county being declared and the response of so many counties without a pre-disaster mutual aid agreement in place with New York City, FEMA found certain mutual aid arrangements eligible even though they were not formally established in writing prior to September 11, 2001. By doing so, several provisions of Policy Series 9523.6 were waived. These waivers and authorities were permitted only because the impact of this terrorist event was catastrophic and well beyond reasonable planning assumptions of the applicants, and because mutual aid agreements were unlikely to have been formulated with all the entities from whom assistance was needed.

In reimbursing local governments within NYS who responded to the aid of NYC, FEMA limited the eligible costs to overtime, travel expenses, lodging, and other direct costs, and reimbursed the mutual aid provider directly. Only applicants who had pre-9/11 mutual aid contracts in place that allowed payment for straight time were reimbursed for that cost. All mutual aid providers outside of the state had to have a pre-9/11 mutual aid contract in place to be reimbursed, in that case through NYC. The City did not request

reimbursement for any in-state or out-of-state mutual aid providers because, according to NYC's Office of Emergency Management (OEM) officials, none billed the City.

Specific to DR-1391, the vast majority of mutual aid assistance requested by NYC was provided by various New York State counties. Although numerous counties were called upon to support the response and recovery effort, Nassau, Suffolk, Westchester, and Rockland counties incurred most of the mutual aid costs. These four alone accounted for approximately \$10.5 million in mutual aid assistance, with Nassau County providing the bulk—over \$7.2 million in mutual aid assistance.

Obtain and Maintain Insurance

Per Section 311 of the Stafford Act and Title 44 CFR § 206.253, following any disaster, and as a condition for receiving PA funds, an applicant must obtain and maintain insurance on those insurable facilities (including content, equipment and vehicles) for which PA funding had been found eligible. The insurance must be for the hazard that caused the damage. An applicant is exempt from this requirement only if the state insurance commissioner certifies that such insurance is not, per Section 311(a)(1) of the Stafford Act, “reasonably available, adequate, and necessary.” In addition, with regard to requests from public entities that they be allowed to self-insure, Section 311(a)(c) of the Stafford Act notes that only states will be allowed to act as self-insurers.

Prior to 9/11, NYC did not maintain commercial insurance on NYC buildings or property, such as vehicles or building contents. Rather, NYC considered itself to be “self-insured.” When damages or losses occurred to a NYC property, the property was either not repaired or replaced, or else it was replaced or repaired using funds appropriated from NYC revenues.

Following 9/11, NYC requested that it be allowed to continue to self-insure and to be exempted from FEMA's Obtain and Maintain Insurance requirement. NYC argued that obtaining and maintaining commercial insurance for the damaged or destroyed property eligible for PA funding would be a deviation from normal business practice, resulting in serious fiscal implications to NYC's budget. On March 26, 2002 the NYS Superintendent of Insurance issued a letter stating that NYC was self-insured, and that the type of insurance required was not reasonably available, adequate, and necessary. FEMA's Acting Regional Director declined to recognize NYC as self-insured, but granted a waiver to the Obtain and Maintain requirement based on the NYS Superintendent of Insurance's opinion.

Port Authority Apportionment

One of the most complex challenges of the disaster was determining an insurance apportionment strategy for the Port Authority of New York and New Jersey. The Port Authority reported estimated losses in excess of \$4.6 billion, and had \$1.5 billion of insurance coverage for all insured risks on a per occurrence basis. Since the Port's projected losses significantly exceeded its insurance coverage—the only applicant to

whom this occurred in DR-1391—FEMA worked with the Port Authority to develop a funding strategy that would provide the Port Authority with cash flow, yet account for the Port Authority’s future insurance proceeds.

For the first year and a half after the disaster, while estimates of the Port’s overall loss were still being developed, FEMA, NYS, and the Port Authority agreed to apply a 50 percent insurance reduction to each individual funding obligation. The implementation of this strategy allowed Stafford Act grant funds to be released in advance of final insurance resolution. The 50 percent was based on FEMA’s analysis at the time of the Port’s Preliminary Loss Assessment.

Through subsequent developments and the Port Authority’s refinement of its losses, FEMA later modified its funding strategy and effectively reduced its obligation outlay to 26 percent of eligible projects. FEMA and the State allowed individual project reimbursements to be released with varying percentages applied for insurance proceeds. Even though the Port Authority’s loss claim will continue to mature, the financial model—the Insurance Apportionment Strategy—calculated the net FEMA eligible obligation at \$409.88 million, representing 26 percent of the total Stafford-eligible costs.

In the end, the Port Authority was granted \$397.97 million as Stafford Act-eligible costs obligated via PWs, and an administrative allowance of \$2.03 million. FEMA was able to fully exhaust the available insurance proceeds by documenting the amount of eligible work and making provisions through the apportionment process, thus ensuring no duplication of insurance benefits.

Equipment and Contents Repair and Replacement

Costs contained in this category are relatively low since its focus is the repair and replacement of damaged equipment, computer systems, contents and furnishings. More specifically, this category includes costs associated with the:

- (1) Replacement of destroyed vehicles;
- (2) Installation and replacement of telecommunication and computer systems, and,
- (3) Replacement of destroyed building contents and furnishings.

The repair and replacement of larger, more permanent structures, such as buildings, water mains, and transportation components are included in the Infrastructure category.

Death and Disability Benefits

Costs contained within this category are for certain contractually obligated death benefits, increased pension contributions, and other costs associated with the death or disability of emergency personnel as a direct result of the disaster. Specifically, this category includes costs for:

- (1) Funeral and memorial services;
 - (2) Lump sum line of duty benefits;
 - (3) Increased pensions due to line of duty deaths and increased disability retirements;
 - (4) Leave payout to beneficiaries; and,
- Cost of living adjustments for the State's pension contribution

Hazard Mitigation

This category contains costs associated with FEMA's 404 Hazard Mitigation Grant Program (HMGP), which for DR-1391-NY provided funds for long-term hazard mitigation measures against terrorism. Funding for HMGP is generally 15 percent of the total estimated Federal disaster assistance to be provided by FEMA under the declaration. That 15 percent is cost-shared on a 75/25 Federal/State and local ratio. For this event, it was capped at 5 percent of that total, limited to the disaster area, and intended for projects that protect infrastructure and systems essential to the City's continued viability. These parameters on the HMGP were implemented due to the immense financial size of the disaster, particularly where the disaster assistance that serves as the basis for the HMGP allocation was provided at 100 percent federal expense, with no State or local cost-share. FEMA considered many projects, including those that:

- (1) Protect public infrastructure and utilities;
- (2) Protect key governmental and healthcare facilities;
- (3) Promote awareness initiatives;
- (4) Ensure the continuity of government and business operations;
- (5) Promote high-rise building safety; and,
- (6) Protect public landmarks.

Administration

This category includes costs associated with administering all of the FEMA Federal grant programs for DR-1391-NY. The most significant and costly items in this category are those associated with:

- (1) Grant management costs (including the FTA);
- (2) FEMA administrative costs;
- (3) Contractor costs; and,
- (4) Administrative allowances.

New Jersey

Included within this category are all costs funded through EM-3169-NJ. The most significant and costly projects in this category were those associated with emergency protective measures taken by the State of New Jersey and its associated entities. Specifically, this category contains funds expended by New Jersey resources to:

- (1) Provide logistical and operational support to NYC;
- (2) Evacuate Lower Manhattan;
- (3) Transport and treat the injured;
- (4) Establish emergency staging areas for rescue and recovery operations;
- (5) Secure bridges and tunnels; and,
- (6) Manage traffic to and from New York City.

Not included in this category are New Jersey projects that were sponsored by the New York State Emergency Management Office.

Individual and Family Grant

Costs contained within this category are for projects in which individuals, not public entities, were the ultimate beneficiaries of services. The most significant and costly projects in this category are those associated with the Human Services Program, which includes costs for:

- (1) Mortgage and Rental Assistance;
- (2) Temporary Housing;
- (3) Individual and Family Grants;
- (4) Disaster Unemployment;
- (5) Crisis Counseling; and,
- (6) Disaster Food Stamps.

Also included in this category are funds expended via Interagency Agreements for:

- (1) Expanded health care monitoring for rescue workers;
- (2) Establishment of a health registry;
- (3) Medical screening/health assessments of Federal workers; and,
- (4) Residential cleaning and sampling.

Costs associated with operating the Family Center are also included in this category.

While all of the categories of spending listed above are important, the Crisis Counseling program was the most significant FEMA had established since the Murrah Building bombing in Oklahoma City in 1995. As with the Oklahoma City experience, this program was also of a longer duration than most programs associated with disaster-related counseling. The issues and challenges to individuals and families such as Post-Traumatic Stress Syndrome and other mental health challenges caused by such a horrific event are manifested in the size and scope of this program.

The largest program in terms of financial costs was the Mortgage and Rental Assistance (MRA) program. This program was deleted from the Stafford Act with the passage of the Disaster Mitigation Act of 2000. However, that Act and the provisions for the deletion of MRA were not yet in effect in September of 2001. As such, it was still an eligible program and available for this disaster. The MRA program authorized temporary

mortgage or rental payments to or on behalf of individuals and families who experienced financial hardship caused by a major disaster. Given the need to show causality, as well as a requirement that the applicants have received a written notice of dispossession or eviction, this had always been a challenging program to administer. Given the population size of the immediate area impacted by this event, this was an especially difficult program to administer in both an urgent and equitable manner. However, despite all of those challenges, a significant number of applicants were assisted through this program.

The most challenging program, among human services programs, was the Individual and Family Grant (IFG) program. Traditionally this program helps individuals and families to replace household items and provides special help for those without adequate insurance to pay for some medical and funeral expenses. The most difficult aspect of the IFG program was the payment for air conditioners based on the contaminated air quality caused by the destruction of the towers.

By the time determinations had been made regarding air quality, most home inspections, FEMA's chief means of verification of damage, had already been performed. The EPA's warnings regarding the air quality were real, as were the concerns of residents. Therefore, rather than re-inspect thousands of homes, FEMA and the State of New York accepted self-certifications by residents as to the urgency of their need and to their contention that they were replacing air conditioners previously owned.

While FEMA and the State entered into this program cognizant of the risk of fraud, as with many emergency-related programs, we err on the side of safety with the assumption that we could assure more accountability as the recovery continues. The aggressive, and at times deceptive, approach by vendors anxious to encourage purchases presented a serious complication. The fact that there was no re-inspection and the vendors' approach contributed to fraud and abuse in the IFG program. Although this program was abused, it also ensured that those most in need of such assistance received help.

Undeniably, the WTC disaster impelled us to move quickly and compassionately. However, it is also our duty to ensure that our programs provide the benefits intended under the law to eligible applicants. The experience with the September 11th IFG program underlines the importance of balancing compassionate service with the need for accountability. To provide a clear understanding of how effectively the program is operating, the States must perform inspections and, barring those, random eligibility samples throughout the process.

Conclusion

Taken together, these project areas represent an overall picture of the damage and the steps taken to repair the damage and to assist the individuals, families, and communities who suffered the most direct pain and loss from this national event.

Even a brief review of the different categories of spending serves as a reminder of the various forms of disruption and chaos caused by the event – but it is also a reminder of the heroic work that took place.

I appreciate the opportunity to share with you the details of FEMA's role in response, recovery, and mitigation for the World Trade Center disaster, and I will do my best to answer any questions you may have.